

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 1 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

I. Scope:

This policy applies to Tenet Healthcare Corporation and its subsidiaries and affiliates other than Conifer Holdings Inc. and its direct and indirect subsidiaries (each, an “Affiliate”), any other entity or organization in which Tenet or an Affiliate owns a direct or indirect equity interest of greater than 50%, and any entity in which an Affiliate either manages or controls the day-to-day operations of the entity (each, a “Tenet Entity”) (collectively, “Tenet”).

II. Purpose:

To guide a Tenet Entity in undertaking all Physician Employment Arrangements (PEAs) and to establish processes to ensure that all PEAs comply with the federal Anti-Kickback Statute, the Stark Law, applicable state anti-kickback and self-referral statutes, and other applicable laws and regulations.

III. Definitions:

Assistant General Counsel: The attorney in the Tenet Law Department who oversees Tenet Entity’s Operations Counsel. Tenet’s General Counsel can approve in lieu of the Assistant General Counsel.

Fair Market Value (FMV): The value in arm’s-length transactions consistent with compensation that is the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party at the time of the agreement.

Federal Health Care Program: Any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government, as defined in 42 U.S.C. § 1320a-7b(f). This includes but is not limited to: Medicare, Medicaid/MediCal, managed Medicare/Medicaid/MediCal, TRICARE/VA/CHAMPUS, SCHIP, Federal Employees Health Benefit Plan, Indian Health Services, Health Services for Peace Corp Volunteers, Railroad Retirement Benefits Black Lung Program, Services Provided to Federal Prisoners, and Pre-Existing Condition Insurance Plans (PCIPs).

Immediate Family Member: A husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild of a Physician.

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 2 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

Physician: A duly licensed and authorized chiropractor or doctor of medicine, osteopathy, dental surgery, dental medicine, podiatric medicine, optometry, and their Immediate Family Members.

Physician Employment Arrangement (PEA): An arrangement in which the Physician provides Services to or on behalf of the Tenet Entity where the Physician is considered to be an employee of the Tenet Entity under the common law rules that apply in determining the employer-employee relationship (as applied for purposes of Section 3121(d)(2) of the Internal Revenue Code of 1986). In some instances, the Tenet Entity utilizes professional services arrangements with an independent contractor Physician or group of Physicians to provide patient care services to or on behalf of the Tenet Entity on a recurring and regular basis. For purposes of this policy, the same professional qualifications set forth in this policy are to be met by Physicians, whether under a Physician Employment Arrangement or an independent contractor arrangement.

Services: Professional medical, medico-administrative, or consulting services furnished by a Physician on behalf of the Tenet Entity under a Physician Employment Arrangement, consistent with this policy. Notwithstanding, for purposes of this policy, Services do not include non-billable administrative services provided by an employed Chief Medical Officer or similar role for a Tenet Entity.

Tenet Physician Resources (TPR): A department within Tenet tasked with, among other things, the employment of Physicians and management of Physician practices through its associated entities.

Remuneration: Anything of value including but not limited to cash, items, or services.

IV. Policy:

A Tenet Entity may not enter into a Physician Employment Arrangement (PEA) unless (1) the Tenet Entity has documented an objectively-determined, legitimate need for the Services contemplated by the PEA, and (2) Physician has met the necessary criteria for employment, as set forth in this policy. A PEA will identify the Services to be furnished.

V. Procedure:

- A. Tenet Entity shall follow the steps set forth in Exhibit A when deciding to enter into a PEA.
- B. Tenet Entity shall not execute any physician employment agreement until the assigned Tenet Entity Operations Counsel and, if required by this policy, the Assistant General Counsel has (1)

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 3 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
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reviewed and approved the proposed PEA to ensure compliance with the applicable laws and (2) ensured documents relevant to the proposed PEA are set forth in eCATS, except as otherwise provided herein.

- C. Tenet Entity shall submit the PEA package for review and approval in eCATS. Once all required approvals have been obtained in eCATS, the Tenet Entity authorized person may execute the physician employment agreement on behalf of the Tenet Entity.

The Tenet Entity authorized person shall notify the Physician:

1. He or she shall not perform any of the designated duties, and
2. Tenet Entity shall not provide any Remuneration in connection with a physician employment agreement until after the physician employment agreement has been executed by all parties.

After execution of the Physician Employment Agreement, the Tenet Entity authorized person, or their designee, shall upload the executed agreement into the eCATS system in accordance with L-15 Electronic Contract Approval Term Sheet (eCATS). For new PEAs, the parties shall also execute a commencement date confirmation, which will be uploaded to eCATS within 30 days following the commencement date.

- D. Early Termination/Renewal/Amendment

1. Terminations of a PEA during its term, other than automatic terminations and notices of non-renewal to be effective at the end of the term, are permitted only after assigned Tenet Entity Operations Counsel has determined termination is unrelated to the value and volume of referrals or other business generated for a Tenet hospital.
2. Renewal of a PEA is permitted only through a full approval of the entire arrangement through the eCATS process as provided in Section E of Exhibit A and Section B above.
3. Except for amendments which are not material and may be approved by Operations Counsel pursuant to L-15, amendments are only allowed after the following eCATS submission:
 - a. RFPE-RA,

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 4 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

- b. Chief Executive Officer (CEO) and Chief Financial Officer (CFO) Acknowledgement Forms,
- c. Draft Amendment,
- d. FMV support, and
- e. Approvals required by L-15.

In addition, the Assistant General Counsel must approve the amendments relating to Remuneration if the new Remuneration would require Assistant General Counsel pursuant to Exhibit A Section C(2).

- E. Tenet Entity shall retain all eCATS packages, agreements, and other documentation relating to each Physician Employment Arrangement in accordance with AD 1.11 Records Management and its Record Retention Schedule.
- F. Any exceptions to this policy require the Assistant General Counsel’s prior written approval.

VI. Enforcement:

All employees whose responsibilities are affected by this policy are expected to be familiar with the basic procedures and responsibilities created by this policy. Failure to comply with this policy will be subject to appropriate performance management pursuant to all applicable policies and procedures, up to and including termination. Such performance management may also include modification of compensation, including any merit or discretionary compensation awards, as allowed by applicable law.

VII. References:

- AD 1.11 Records Management and its Records Retention Schedule
- Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)
- Code of Conduct
- Contractual Arrangements Manual (CAM)
- Definition of Immediate Family Member, 42 C.F.R. § 411.351
- Employment Exception, 42 U.S.C. § 1320a-7b(b)(3)(B)



CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 5 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

Employment Exception, 42 U.S.C. § 1395nn(e)(2); 42 C.F.R. § 411.357(c)

In-office Ancillary Services Exception 42 U.S.C. § 1395nn(b)(2)

Isolated Transaction Exception 42 U.S.C. § 1395nn(e)(6)

L-15 Electronic Contract Approval Term Sheet (eCATS)

Quality, Compliance, and Ethics Program Charter

Safe Harbor for Employees, 42 C.F.R. § 1001.952(i)

Stark Law, 42 U.S.C. § 1395nn, and implementing regulations

VIII. Exhibit:

Exhibit A – Steps to Enter into a Physician Employment Arrangement

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 6 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

Exhibit A – Steps to Enter into a Physician Employment Arrangement

Tenet Entity shall implement the following steps.

A. Identify the Need for the Services.

1. Tenet Entity shall provide appropriate documentation indicating a Physician should be retained to furnish Services in order to promote quality, cost-effective care or fulfill other legitimate needs unrelated to referrals to a Tenet Entity.
2. If less than a full-time need is shown, the Tenet Entity shall project the number of hours or amount of Services reasonably necessary.
3. Tenet Entity may obtain the input of a Tenet hospital or other Tenet Entity on the need for a hospital based Physician or general community need for a Physician in the specialty.

B. Demonstrate Physician’s Professional Qualifications.

Tenet Entity may not enter into a Physician Employment Arrangement (PEA) unless it has objectively determined the Physician is qualified and capable of performing the Services. Tenet Entity personnel, in conjunction with Human Resources, shall verify the following eligibility criteria are met and store the documentation in Physician’s personnel file. Physician shall:

1. Be capable of furnishing the Services (i.e., no pre-existing obligations, such as a non-competition obligation, which would limit or restrict Physician from fully performing the Services).
2. Provide a copy of Physician’s current curriculum vitae for review and consideration.
3. Have completed an ACGME or AOA accredited residency program; have proof of enrollment if Physician has not yet completed post-graduate studies; or otherwise qualify under Subsection 4 immediately below.
4. Hold board certification in the specialty and/or sub-specialty for which he or she is being employed, if the time period defined by the applicable certifying board to achieve board

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 7 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

certification has lapsed, or in the case of renewals only, have been continuously employed by a Tenet Entity since April 3, 2014.

If the time frame has not lapsed, Physician is eligible if he or she is working toward obtaining board certification within the time frame required by the applicable board.

An exception to this eligibility criterion may be requested through the TPR Chief Medical Officer, USPI Chief Medical Officer, or Tenet Chief Medical Officer. Exception requests should be rare and will only be granted upon determination it is in the best interest of the patients in the applicable community.

5. Have a current, active professional license without restriction or limitation. If Physician is relocating to the state in which he or she is applying for employment, Physician must have a current, unrestricted license in the state where he or she currently practices.
6. Not have revocation, termination, suspension, probation, restriction, or limitation of their medical license within the past 10 years. A Physician will not be excluded if the revocation, termination, suspension, probation, restriction, or limitation was due to administrative reasons unrelated to crimes, professional competence, or conduct, and a written explanatory summary is submitted. Any revocation, termination, suspension, probation, restriction, or limitation greater than 10 years old requires the Physician to submit a written explanatory summary.
7. Provide a current National Practitioner Data Bank (NPDB) self-query report for review and consideration.
8. Have a current unrestricted DEA registration (or evidence of current application for DEA registration), prior to commencement, provided DEA registration is required to carry out the proposed duties.
9. Have a current unrestricted state controlled substance certificate, prior to commencement, provided such certificate is required to carry out the proposed duties.
10. Not be currently debarred, excluded, suspended or otherwise ineligible to participate in any state or Federal Health Care Programs, as verified through a search of the U.S. General Services Administration’s (GSA) Lists of Parties Excluded from Federal

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 8 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

Procurement and Nonprocurement Programs as maintained on the System for Award Management (SAM), the Office of Inspector General (OIG) of the Department of Health and Human Services List of Excluded Individuals/Entities, and any applicable state healthcare exclusion list, which may be shown through completion of a third party background check.

11. Have no history of felony conviction, or withhold of felony adjudication, for a crime against a person (including a no contest plea or plea of guilt).
12. Have no pending charges and no conviction within the last seven years of, withhold of adjudication for, plea of guilty or no contest, deferred prosecution, or pre-trial intervention arrangement to a felony or misdemeanor unless wholly unrelated to:
 - a. The practice of their profession;
 - b. Other healthcare matters;
 - c. Third-party reimbursement;
 - d. Violence or abuse; fraud or theft; or
 - e. The use, prescription, distribution or furnishing of DEA scheduled drugs (Schedules I through V).
13. Meet the requirements detailed below during the last 10 years, to the extent Physician has been a member of an organized medical staff. Occurrences greater than 10 years old require Physician to submit a written explanatory summary and authorization to obtain further information from the involved entities.
 - a. Physician’s medical staff membership and clinical privileges at any hospital or healthcare facility shall have been granted and maintained in good standing without adverse action of any kind, whether voluntary or involuntary except actions for administrative reasons.
 - b. Physician must have no denial, revocation, termination, suspension not related to administrative issues, reduction, loss, condition, restriction, limitation, involuntary resignation or relinquishment, or voluntary resignation, leave of absence or

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 9 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

relinquishment after notice of investigation or discipline regarding appointment, membership, or clinical privileges (or reinstatement after any of the previous actions) in the same or similar specialty at any hospital or healthcare facility.

14. Complete all tasks and documents required by Human Resources of any person seeking to become an employee.

Notwithstanding the foregoing, if a Physician who is a member in good standing of the active medical staff at a Tenet hospital fails to meet the criteria set forth in Subsections 6, 11, 12, or 13 above, the Physician may be deemed eligible for employment by Tenet’s Chief Medical Operating Officer, or its designee, and the Assistant General Counsel, in their sole discretion, based upon a finding that the Physician is qualified and capable of performing the Services and can be expected to act in accordance with personal and professional standards of conduct.

C. Calculate Fair Market Value Remuneration.

Tenet Entity may not enter into a PEA unless it has objectively determined and documented Remuneration is consistent with Fair Market Value (FMV). The employing Tenet Entity shall exclusively determine Remuneration without input from a Tenet hospital or other Tenet Entity business unit.

1. The Remuneration paid by Tenet Entity to the Physician under the physician employment agreement shall not vary (or be adjusted or renegotiated) in any manner based on the volume or value of any actual or expected referrals to, or business otherwise generated for, a Tenet Entity by the Physician. Moreover, Remuneration paid to Physician shall not directly or indirectly benefit any other individual or entity in a position to make or influence patient referrals to, or otherwise generate business for, a Tenet Entity.

Physician may be paid productivity Remuneration based on Services personally performed by Physician, or, for a Tenet Entity that is a “group practice” (as that term is defined in 42 C.F.R. § 411.352), productivity Remuneration based on Services personally performed by the Physician or “incident to” such Services, or a share of “overall profits of the group,” as that term is defined in 42 C.F.R. § 411.352(i).

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 10 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

2. To ensure Remuneration for Services is consistent with FMV, Tenet Entity shall derive an annual overall Remuneration amount equal to or less than the median amount from:
 - a. benchmarks obtained by the Law Department from an independent third party valuation company; or,
 - b. if the foregoing is unavailable, the Table for Physician Compensation contained in Medical Group Management Association (MGMA) – Physician Compensation and Productivity Survey.

For Services to be compensated on an hourly basis, Tenet Entity shall divide the median amount by 2000 hours.

Notwithstanding the foregoing, if Tenet Entity believes Remuneration derived from the above methodology does not represent FMV of the Physician’s Services, it may seek approval of a higher Remuneration amount from the assigned Tenet Entity’s Operations Counsel and Tenet Entity Vice President, provided all other requirements of this policy are met.

Tenet Entity shall also obtain approval from the Assistant General Counsel for Remuneration which:

- a. Exceeds the 75th percentile reported by the above resources, and
- b. Is not based solely on the Physician’s personal productivity utilizing an EBIT model or a wRVU conversion factor, which is equal to or less than the median value from the resources above plus pass-through of Remuneration for personally performed Services of the Physician to third parties pursuant to contracts with Tenet Entity,

TPR shall provide all supporting documentation, as well as any other information requested, to the eCATS package.

3. Tenet Entity may seek to acquire the practice of an existing Physician or group of Physicians. Remuneration paid for the assets shall be consistent with FMV and determined in a manner that does not take into account (directly or indirectly) the historical or anticipated future volume or value of any referrals by the selling Physician(s)

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 11 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

to Tenet Entity, any Tenet facility, or other business generated between the parties. To determine the FMV of the assets (e.g., furniture and equipment) or the entity, Tenet Entity shall obtain an independent third-party written evaluation from an approved reputable, qualified evaluation firm. The aggregate purchase price paid by Tenet Entity shall be no greater than the appraised FMV.

D. Review the Requirements of the Physician Employment Agreement.

The proposed PEA shall:

1. Be evidenced by a written physician employment agreement signed and dated by both parties and there shall be no oral or implied understandings not incorporated in the written agreement.
2. Be for a term not to exceed five years, except as approved by the Assistant General Counsel and Tenet Entity Vice President.
3. Not be conditioned on the Physician (a) making referrals to a Tenet Entity, or (b) otherwise generating business for a Tenet Entity, provided, however:
 - a. The physician employment agreement may require the Physician to obtain and maintain active staff privileges at a Tenet Entity if appropriate for the Services in question;
 - b. The physician employment agreement (but not a professional services agreement) may require referrals to a Tenet Entity if
 - i. The regulatory requirements are met,
 - ii. The required referrals relate solely to the Physician’s Services covered by the scope of the employment and are reasonably necessary to effectuate the legitimate business purpose of the employment relationship, and
 - iii. The Assistant General Counsel and Tenet Entity Vice President approve the referral.

CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 12 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

In no event will the Physician be required to make referrals to a Tenet Entity related to Services furnished by the Physician outside the scope of their employment with Tenet Entity.

4. Not preclude or restrict in any way Physician from (a) establishing staff privileges at any hospital or facility, (b) except as permitted by Subsection 3 immediately above, referring patients to or utilizing the services of any hospital or facility, or (c) otherwise generating business for any hospital or facility.
 5. Require Physician to treat all patients in a nondiscriminatory manner.
 6. Require the Physician to certify he or she shall not violate the Anti-Kickback Statute and/or the Stark Law, and to abide by the following:
 - a. Tenet’s Compliance Program and training requirements;
 - b. Tenet’s Code of Conduct; and
 - c. Tenet’s policies and procedures related to the Anti-Kickback Statute and the Stark Law.
- E. Prepare the Electronic Contract Approval Term Sheet (eCATS) Package.
- For each proposed PEA, TPR shall submit into eCATS:
1. A detailed Request for Physician Employment (RFPE) obtained from the Law Department’s Contractual Arrangements Manual (CAM);
 2. CEO Acknowledgement Form;
 3. CFO Acknowledgement Form;
 4. List of active arrangements for stacking analysis;
 5. FMV support;
 6. Pro forma/budget;



CORPORATE POLICY

Manual/Library Name: Law Department	No: L-10
	Page: 13 of 13
Policy Title: Physician Employment Arrangements	Effective Date: 05/20/2022
	Previous Versions: 10/5/20; 11/29/19; 03/29/19; 07/30/18; 02/1/17; 02/12/15; 08/27/13; 09/27/11; 11/1/10; 05/6/08; 11/1/07; 02/12/07; 01/1/07; 08/17/04
	Approved By: Executive Leadership Team
	Approval Date: 05/10/2022

7. Identification of each Tenet person involved in the negotiation or review of the PEA. Draft agreements (e.g., a draft physician employment agreement and draft commencement date confirmation);
8. Documentation supporting Physician’s eligibility for employment:
 - a. Evidence of current professional licensure;
 - b. Evidence of medical board certification, board eligibility, or other approval;
 - c. OIG/SAM and any applicable state healthcare exclusion list search results;
 - d. Completed Employment Questionnaire; and
 - e. Physician’s NPDB self-query report.
9. Any other documentation required to support the arrangement, including any other information required by the assigned Tenet Entity Operations Counsel or Assistant General Counsel.